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## Ballistic Missile Defense

### An Administration Perspective

Robert G. Bell

Conclusions and Definitions

Note:

Before one delves into any defense issue one must first begin with the underlying question: "What is our strategy?"

What the Clinton Administration is doing with regard to strategic *offensive* systems provides an instructive context for what we're now trying to do on the strategic defensive side.

To begin with, the Clinton Administration believes, fundamentally, that deterrence still matters.

Why? Is it because we think that Russia is going to attack us today, tonight, tomorrow, next week, next month? No, of course not. We're working very hard--across the board--in many areas, not the least of which are arms control, denuclearization and the Nunn-Lugar initiatives, to make sure that we continue to strengthen strategic stability and assist Russia in its democratic and economic reforms.

But, a strategic partnership with Russia is not a "for sure" conclusion yet. Thus, it is fundamental to this Administration's strategy that we are hedging against the requirement to reconstitute strategic deterrence in full form.

This hedging strategy drives many decisions, and each of them carries a price tag. These include:

- a Nuclear Posture Review (NPR) that established a requirement for 3,500 strategic warheads, with a premium on the flexibility to upload and reconstitute.
- a decision to keep the ICBM leg of the triad, to modernize the Minuteman III, and to keep three Minutemen wings deployed in ICBM silos.
- a decision to complete the D-5 Trident missile purchase, keep 14 Trident boats, and backfit the D-5 into 4 of those 14 submarines to make sure we have 14 D-5 armed Trident boats.
- a decision to ask Congress for a very challenging stockpile stewardship program, to make sure that our nuclear weapons are reliable, safe, and mission-capable absent full-scale nuclear testing.
- a decision to commit this Administration to solving the tritium problem.
- a decision to spend a lot of money on START verification and monitoring of Russia's strategic

offensive modernization.

If you don't think maintaining a deterrent hedge matters; if you think it's "over, over there;" that Russia could never again constitute a nuclear threat to the United States, and all we have to deal with are missile threats from regional outlaw regimes, then you can take a different approach and you can save a lot of money.

But that's not what the Clinton Administration thinks.

## **ABM Treaty Remains Important**

In this context, I would argue that the ABM (Anti-Ballistic Missile) Treaty matters as well.

Why is that? Well, it is axiomatic that we must include, as part of our calculation of the sufficiency of deterrence, the threat we will face on the other side in terms of defenses. Without the ABM Treaty, we would require more RVs (Re-entry Vehicles) than the 3,500 level set in START II. So the ABM Treaty is key to our ability to ask the United States Senate to ratify this Treaty.

And if you believe we should go below 3,500, and we're continuing to discuss that question within the Administration now, then the ABM Treaty matters even more.

Furthermore, within the limits of the Treaty itself you have to ask yourself what are the defenses that STRATCOM would have to confront and penetrate if we ever had to retaliate; not just the 100 authorized ABMs, but the thousands of SAMs that could be upgraded and, increasingly, the whole new possibility of dedicated Russian Theater Missile Defenses (TMDs).

So does that mean, then, that what we want to do is expand the ABM Treaty and transform it through some sort of aggressive outreach effort into a "TMD Treaty," to capture and eliminate any strategic defensive threats from Russia below the level of their authorized ABMs?

Of course not. The ABM Treaty is not a "TMD treaty." Does that mean "anything goes," though? Does that mean that you can just take any interceptor missile and hang a sign on it that reads "TMD," and as long as we say it's a TMD, it's a TMD, period, end of case?

Does it mean that if we see something on the Russian side that "looks like, walks like, talks like" an ABM, we have no recourse to say, "Wait a minute," if they say that's a TMD? No. And there's a good reason for this.

It's because the ABM Treaty has a provision, Article VI(a), that was added because the United States, looking at the Soviet Union, which had deployed ABMs and 10,000 surface-to-air missiles, said, "We have to have some insurance against their ability to have a covert ABM system in the guise of upgraded SAMs."

## **Determining What Constitutes TMD**

My second point is that this debate about what is a TMD and what is not a TMD goes back to the ratification hearings and the negotiations themselves.

During the Senate hearings on the ABM Treaty in 1972, the then-director of Defense Research and

Engineering, Johnny Foster, was asked by Senator Proxmire, "Where's the line? What is the distinction between these two?"

He said, "If you shoot a missile interceptor at any target that goes faster than 2 kms per second, that's an ABM."

Now, that was a personal view, but he went on from that testimony to promulgate that view for our programs in internal DOD guidance for years to follow.

In 1978, the Security Consultative Commission (SCC) promulgated an agreed statement that addressed the question of clarifying what Article VI(a) means, and what "tested in an ABM mode means." But that is only *half* of Article VI(a). The other half prohibits either side from "giving" *non*-ABM interceptors "the capability to counter" strategic ballistic missiles.

Throughout the 1980's, this precise issue was at the center of internal debates within the Reagan and Bush Administrations as they drafted their annual arms control compliance reports on the Soviet Union.

The compliance issue they wrestled with was quite specific: had the Soviet Union illegally acquired an ABM capability by giving its SA-10 and SA-12 surface-to-air missile systems the capability to counter strategic ballistic missiles?

What those administrations told the Congress was that since the United States could not satisfy itself that the Soviet Union had *not* turned the SA-10 into a covert ABM, we concluded that the Soviet Union *may* have been violating the ABM Treaty.

These concerns were not based on any *demonstration* by the Soviet Union of this capability. Rather, it was based on our own unilateral analyses of what we thought the capability of that system was.

The next step in this chronology occurred in 1991 with the Missile Defense Act of 1991, in which Congress directed the deployment of a national, treaty-compliant ABM and urged the President to negotiate a clarification of the TMD demarcation issue.

That instruction was revalidated by Congress several times, and, indeed, the Bush Administration conducted extensive discussions in the Ross-Mamedov Working Group.

## **Negotiating TMD/ABM Agreements**

At the very end of the Bush Administration, Secretary of Defense Dick Cheney wrote an important memorandum on this subject.

This memorandum, in effect, said the following to the new Clinton Administration: "This is a critical issue; it is urgent that you undertake to resolve it. And here's our parting suggestion: We will posit a theory of what this demarcation might look like. We would suggest that you take six months to study this and then ensure it is applied reciprocally so there is no double standard."

Well, we mostly did just that. We did one thing differently, though. We didn't adopt the exact demarcation formula that he suggested. There was a good reason for that: no legal office, in any agency in our government, could support the Cheney proposition for how you drew that line.

Instead, we went to Geneva in November of 1993 and said to the Russians, here's how we think we should draw the line: "If you do not test a TMD against a strategic ballistic missile"--which we then proceeded to define--"that will not be deemed to be an ABM."

The theory here was quite simple. No rational military organization is going to deploy as an ABM defense, at the cost of billions of dollars, a system that has not been tested to show that it can be an ABM.

That was really phase one of this effort, from November 1993 to the Summer of 1994. The Russians said "okay, as far as it goes." But they said "we need more"; we need speed limits on the interceptor itself."

We said, "Well, we don't think we agree with that, but if there are going to be speed limits, they'll have to be speed limits that permit the specific TMD interceptor systems we are developing."

So there was a second phase of this negotiation, from Summer until Fall of 1994, where we talked about interceptor speed limits, our speed limits. We agreed on most, but not all, of those.

Then last November, when it became evident that the negotiations had gotten stuck and we were not going to push the Russians to accept all our speed limits, we began a third phase in which the talks have been suspended.

During the last six months, we have worked very hard to make sure the Russians understand there's a new Congress, there's a new attitude about missile defense, and there is a real threat requirement that requires this Administration as a custodian of national security policy to deploy highly effective TMDs. The tactical question, then, is now very simple: Do they appreciate this?

At the May Summit in Moscow, we were able to reach agreement on a joint statement of principles. This is not a legally binding agreement that concludes the negotiations. Rather, it is an attempt to have the two leaders say to the working level: "Here are the basic parameters according to which you should try to conclude an agreed statement."

We think this is a hopeful sign. Russia has accepted a formula that says it is not a question of whether a particular interceptor has some theoretical capability in a one-on-one engagement scenario against a particular RV. The question is whether a particular TMD system poses a "realistic threat to the strategic nuclear force of the other side." If not, it should be permitted.

How do you define "realistic threat"? We define "realistic threat" in the context of operational military considerations that take into account a number of factors, including how many are deployed, where are they, what threat they respond to, their range and technical capabilities.

Does the Summit statement mean we've had a breakthrough? We simply don't know.

## **TMD Programs Continue Forward**

But we will soon find out whether the statement was meant by Russia to be hortatory or whether, indeed, Russia will craft a new negotiating position along these lines. We will find out, before we go back to the SCC negotiating table whether we can expect, when we get to the SCC, that there will be a new Russian position.

In the meantime, where does that leave us on TMD? The point I want to emphasize is that while this is going on at the diplomatic level, all our TMD programs are going forward.

You can take our TMD programs across the board, projected to the end of the Clinton first term, and there is no arms control barrier.

Patriot PAC-3 goes forward. Corps SAM/ MEADS goes forward. Navy Lower Tier goes forward. Concept development of the air-based options go forward. Brilliant Eyes goes forward. We certified Navy LEAP; it goes forward. THAAD DEMVAL, the whole DEMVAL test series goes forward.

So we've got time here to have a reasoned, rational debate about this. We've got time to complete this effort with the Russians and get this wrapped up, tidily. That's clearly the preferred option. And I hope that's the option that Congress would give us running room to complete.

The danger of Congress stepping in to legislate a solution unilaterally is *precisely* that it is unilateral. By attempting to enforce its demarcation solution on the executive branch through a funding restriction, Congress raises significant international legal issues, as well as constitutional issues regarding the President's authority to interpret and apply the Treaty. That means TMD gets embroiled in a broader separation of powers debate. Second, there is the downside risk to our overall relations with Russia, including in the areas of START I and START II, by trying to end this discussion unilaterally when there is no imperative to do so because we've got *time* to finish it in a much more cooperative and reasoned way.

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